

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

United States of America,

v.

Marielena Ledy Martinez,

Defendant.

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CR No. 7:08-112-2-TMC

OPINION & ORDER

This matter is before the Court on Marielena Ledy Martinez (“Defendant’s”) Motion to Reduce Sentence. (ECF No. 316). Defendant seeks to reduce her sentence based on evidence of her post-sentencing rehabilitation pursuant to the United States Supreme Court’s decision in *Pepper v. United States*, 562 U.S. ____ 131 S.Ct. 1229, 179 L.Ed.2d 196 (2011). For the reasons stated below, Defendant’s motion is denied.

On July 17, 2009, Defendant pled guilty to conspiracy to murder a federal law enforcement officer with intent to intimidate or retaliate against the agent while he was engaged in, or on account of, the performance of his official duties, in violation of 18 U.S.C. § 115(a)(1)(B). (ECF No. 100). On January 21, 2009, Defendant was sentenced by United States District Judge Henry F. Floyd to 216 months imprisonment. (ECF No. 216). Defendant filed an appeal. (ECF No. 166). On June 21, 2010, the Fourth Circuit Court of Appeals affirmed Defendant’s conviction, but remanded for resentencing. (ECF No. 218). On August 19, 2010, Defendant was re-sentenced to 120 months, to run consecutive to the twelve-month sentence Defendant is serving in Case No. 7:05-253. (ECF No. 232). Defendant did not appeal.

Defendant filed this motion on September 11, 2013, seeking a sentence reduction based upon post-conviction rehabilitation activities. (ECF No. 316).¹ In her motion, Defendant

¹This case was reassigned to the undersigned on September 11, 2013.

contends that her sentence should be modified pursuant to the holding in *Pepper v. United States*, 562 U.S. ____, 131 S.Ct. 1229, 179 L.Ed.2d 196 (2011).

The Supreme Court's holding in *Pepper*, however, is inapplicable. In *Pepper*, the Court held that "when a defendant's sentence has been set aside on appeal and his case remanded for resentencing, a district court may consider evidence of a defendant's rehabilitation since his prior sentencing and that such evidence may, in appropriate cases, support a downward variance from the advisory Guidelines range." *Pepper*, 562 U.S. at ____, 131 S.Ct. at 1241. Here, Defendant's sentence has not been set aside and Defendant is not before this court for re-sentencing. Accordingly, *Pepper* is inapplicable. Based on the foregoing, Defendant's Motion to Reduce her Sentence (ECF No. 316) is **DENIED**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
October 16, 2013

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.